For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC–21608; No. 812–9658]

Safeco Life Insurance Company et al.

December 19, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Safeco Life Insurance Company (''Safeco''), Safeco Resource Variable Account B (''Account B''), Safeco Separate Account C (''Account C''), First Safeco National Life Insurance Company of New York (''First Safeco''), Safeco Resource Series Trust (''Trust''), Safeco Asset Management Company (''Asset Management'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(a)(2), 6e–2(b)(15), and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the Trust and any other investment company that is offered to fund variable insurance products and for which Asset Management, or any of its affiliates, may serve as investment advisor, administrator, manager, principal underwriter, or sponsor to be sold to and held by the separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by Safeco, First Safeco, or any existing or future affiliated or unaffiliated life insurance company (''Participating Insurance Companies'') or to existing or future qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''). In addition, Applicants seek exemptive relief to permit the assets of separate accounts of Safeco and First Safeco to be derived from the sale of scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts.

FILING DATE: The application was filed on July 10, 1995, and was amended on November 20, 1995. Applicants have represented that they will file an amendment during the notice period to make the representations contained herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Bibb L. Strench, Esq., Safeco Asset Management Company, Safeco Plaza, Seattle, Washington 98185.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Delaware business trust registered under the 1940 Act as an open-end management investment company.

2. The Trust currently consists of five separate series, each series representing an interest in a separate investment portfolio (''Portfolios''). The Board of Trust may establish additional series of shares at any time, each with its own investment objective and policies.

3. Asset Management serves as investment adviser to each Portfolio of the Trust, and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940. Asset Management is a Washington corporation and a wholly-owned subsidiary of Safeco.

4. Safeco, also a Washington corporation, is a holding company whose primary subsidiaries are engaged in the insurance and related financial services businesses. Safeco is a wholly-owned subsidiary of Safeco Corporation.

5. Account B and Account C are separate accounts of Safeco, and are registered with the Commission as unit investment trusts under the 1940 Act.

6. First Safeco is a New York stock life insurance company and is a wholly-owned subsidiary of Safeco Corporation.

7. The Portfolios currently are sold to Account B and Account C as investment vehicles for variable annuity contracts issued by Safeco. Applicants propose that the Portfolios serve as investment vehicles for various types of Variable Contracts. Portfolio shares will be offered to Separate Accounts of Participating Insurance Companies, including Safeco and First Safeco, which enter into participation agreements with the Trust. In addition, Applicants propose that the Trust offer and sell shares in its Portfolios directly to Qualified Plans.

8. Applicants state that each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under state law and the federal securities laws in connection with any Variable Contract issued by such company. Applicants further state that the role of the Trust under this arrangement will consist of offering its shares to the Separate Accounts and fulfilling any conditions the Commission may impose upon granting the order requested in the application.

9. In addition, Applicants state that the Trust desires to avail itself of the opportunity to increase its asset base through the sale of its shares to Qualified Plans, consistent with applicable tax law. The Qualified Plans may choose any of the Portfolios as the sole investment option under the Qualified Plan or as one of several investment options. Qualified Plan participants may or may not be given an investment choice among available alternatives depending on the Qualified Plan itself. Shares of any Portfolio sold to such Qualified Plans would be held by the trustee(s) of such Qualified Plan as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Asset Manager will not act as investment adviser to any of the Qualified Plans that will purchase shares of the Trust.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding, as defined below. In addition, Applicants seek exemption from Rule 6e–2(a)(2) to the extent necessary to permit the assets of the separate

accounts of Safeco Life and First Safeco to be derived from the sale of both scheduled premium and flexible premium variable life insurance contracts.

Rule 6e–2: Mixed and Shared Funding

2. Rule 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

3. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account (''Underlying Fund'') that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to a separate account issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common Underlying Fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as ''mixed funding.''

4. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to unaffiliated life insurance company separate accounts funding Variable Contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares of the Underlying Fund are offered exclusively to Separate Accounts of insurance companies, additional exemptive relief is necessary if the shares of the Trust also are to be sold to Qualified Plans.

Relief for Separate Accounts

5. Applicants also state that a separate account is eligible for the relief granted by Rule 6e–2(b)(15) only if it meets the conditions of Rule 6e–2(a)(2), which required the assets of the separate account to be derived solely from the sale of variable life insurance contracts and advances made by the life insurer in connection with the operation of such separate account. ''Variable life insurance contracts'' as defined by the Rule 6e–2(c)(1) includes ''scheduled premium'' variable life insurance contracts, but not ''flexible premium'' life insurance contracts. Consequently, a separate account that funds single premium and scheduled premium variable life insurance contracts and flexible premium life insurance contracts would not be deemed to have its assets derived solely from the sale of ''variable life insurance contracts.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available for a separate account the assets of which are derived from the sale of both scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts. Accordingly, Applicants request exemptive relief in order that the separate accounts of Safeco, and First Safeco may be derived from the sale of both scheduled premium and flexible premium variable life insurance contracts.

Rule 6e–3(T)

6. Regarding the funding of flexible premium variable life insurance contracts issued through a separate account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. This exemptive relief extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the Underlying Fund of the separate account offers its shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company . . . .'' Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance Separate Account that owns shares of a management company that also offers its shares to Separate Accounts of unaffiliated life insurance companies. Moreover, because the relief afforded by Rule 6e–3(T) is available only where shares of the Underlying Fund are offered exclusively to separate accounts of insurance companies, additional relief is necessary if shares of the Trust also are to be sold to Qualified Plans.

Sale to Qualified Plans

7. Applicants state that changes in the tax law have created the opportunity for the Portolios to increase their asset base through the sale of Portfolio shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Portfolio of the Trust. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance contract for any period for which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. These diversification requirements are applied by taking into account the assets of the underlying fund if all the beneficial interests in the Underlying Fund are held by certain designated persons. On March 2, 1989, the Treasury Department issued regulations that adopted diversification requirements for underlying funds. Treas. Reg. § 1.817–5 (1989). These regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which permits trustee(s) of a qualified plan to hold shares of an investment company, the shares of which also are held by Separate Accounts of insurance companies, without adversely affecting the status of the investment company as an adequately diversified underlying investment vehicle for Variable Contracts issued through such segregated asset accounts. Teas. Reg. § 1.817–5(f)(3)(iii).

8. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury regulations which made it possible for shares of an investment company to be held by the trustee(s) of qualified plans without adversely affecting the ability of shares in the same investment company also to be held by separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to Separate Accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) given the then current tax law.

9. Moreover, Applicants assert that if the Trust were to sell its shares only to Qualified Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to qualified plans or to underlying fund's ability to sell its shares to such plans. It is only because the Separate Accounts investing in the Trust are themselves investment companies which are relying upon Rules 6e–2 and 6e–3(T) and which propose to have the relief continue in place that the Applicants are applying for the requested relief.

Grounds for Relief

10. Accordingly, Applicants seek an order under Section 6(c) of the 1940 Act. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

11. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-ended investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15)(i) and (ii) of Rules 6e–2 and 6e–3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

12. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants further submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various unaffiliated Participating Insurance Companies that may utilize the Portfolios as the funding medium for Variable Contracts because of mixed and shared funding.

13. Subparagraphs (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provide partial exemptions from Section 13(a), (15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its Variable Contract owners in certain limited circumstances.[1]

14. Voting instructions may be disregarded under subparagraphs (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) if they would cause the Underlying Fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the Underlying Fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

15. Under subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(2) of Rule 6e–3(T), an insurance company may disregard Variable Contract owners' voting instructions if the Variable Contract owners initiate any change in the Underlying Fund's investment objectives, principal underwriter, or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

16. Applicants further assert that the proposed sale of shares of the Trust to Qualified Plans does not impact of the relief requested. As previously noted, Rules 6e–2(b)(15)(iii) and 6–3(T)(15)(iii) permit an insurer to disregard Variable Contract owner voting instructions in certain circumstances. Offering shares of the Trust to Qualified Plans would not affect the circumstances and conditions under which any veto right would be exercised by a Participating Insurance Company. Furthermore, as stated above, shares of the Trust would be sold only to Qualified Plans for which such shares would be held by the trustee(s) of such plans as mandated by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions of such fiduciary made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (2) when the authority to manage, acquire, or dispose of assets of the Qualified Plans is delegated to one or more investment managers under Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustee(s) have the exclusive authority and responsibility for voting proxies. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustee(s) or the named fiduciary. In any event, Applicants assert that pass-through voting to the participants in such Qualified Plans is not required under ERISA or the securities laws. Accordingly, applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material, irreconcilable conflicts with respect to voting is not present with Qualified Plans.

17. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants assert that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance Company offers its Variable Contracts. Accordingly, Applicants submit that the fact that different insurers may be domiciled in

[1] Applicants request no relief for variable annuity separate accounts from the disqualification or pass-through voting provisions.

different states does not create a significantly different or enlarged problem.

18. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard Variable Contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. If a Participating Insurance Company's decision to disregard Variable Contract owners' instructions represents a minority position or would preclude a majority vote approving a particular change, however, such Participating Insurance Company may be required, at the election of the relevant Portfolio, to withdraw its investment in that Portfolio. No charge or penalty will be imposed as result of such withdrawal.

19. Applicants submit that mixed and shared funding should benefit Variable Contract owners by: (a) eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting the expansion of the variety of funding options available under existing Variable Contracts; and (c) encouraging more insurance companies to offer Variable Contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and tower charges.

20. Applicants state that there is no reason why the investment policies of the Portfolios with mixed funding would or should be materially different from what they would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies. Each type of insurance product is designed as a long-term investment program. Moreover, Applicants assert that the Portfolios will continue to be managed in an attempt to achieve their investment objectives, and not to favor any particular Participating Insurance Company or type of insurance product. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding.

21. In addition, Applicants assert that the sale of shares of the Trust to Qualified Plans will not increase the potential for material, irreconcilable conflicts of interest between or among different types of investors. Section 817 is the only section in the Code where separate accounts are discussed. Section 817(h) of the Code imposes certain diversification standards on Underlying Funds of Variable Contracts. Treasury regulation 1.817–5(f)(3)(iii) specifically permits ''qualified pension or retirement plans'' and Separate Accounts to share the same Underlying Fund. Applicants, therefore, have concluded that neither the Code, nor the Treasury regulations or revenue rulings thereunder, present any inherent conflicts of interest between or among Qualified Plan participants and Variable Contract owners if Qualified Plans and the Separate Accounts of Variable Contracts all invest in the same Underlying Fund.

22. Applicants assert that while there are differences in the manner in which distributions are taxed for Variable Contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the Portfolios at their respective net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Variable Contract.

23. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving rights to Variable Contract owners and participants in the Qualified Plans. In connection with any meeting of shareholders, the Trust will inform each shareholder, including each Separate Account and Qualified Plan, of the information necessary for the meeting, including their respective share of ownership in the respective portfolios of the Trust. A Participating Insurance Company will solicit voting instructions in accordance with the ''pass-through'' voting requirement. Qualified Plans and Separate Accounts will each have the opportunity to exercise voting rights with respect to their shares in the Portfolios of the Trust, although only the Separate Accounts are required to pass through their vote to Contract owners. The voting rights provided to Qualified Plans with respect to shares of the Trust would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public.

24. Applicants argue that the ability of the Portfolios to sell their shares directly to Qualified Plans does not create a ''senior security'' as defined by Section 18(g) of the 1940 Act. As noted above, regardless of the rights and benefits of participants under Qualified Plans, or Variable Contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Portfolio. They can only redeem such shares at their net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends. Applicants state that in absence of an exemption form Section 18(f), all shares of the Trust that will be sold to Separate Accounts or Qualified Plans will be of the same class of shares.

25. Applicants have determined that no conflicts of interest exist between the Variable Contract owners of the Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact the insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another fund. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustee(s) of Qualified Plans or the participants in participant-directed Qualified Plans could make the decision quickly and could implement the redemption of their shares from the Portfolios and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

26. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and Variable Contract owners of the Separate Accounts from possible future changes in the federal tax laws than that which already exists between Variable Contract owners.

27. Applicants assert that no policy reasons justify prohibiting a separate account funding scheduled and flexible variable life insurance contracts form relying on rule 6e–2. The interests of scheduled premium variable life Contract owners and flexible premium Variable Contract owners and the regulatory frameworks of rules 6e–2 and 6e–3(T) are sufficiently parallel that the

use of the same separate account to fund both types of contracts should not prejudice the owners of any contracts.

28. Applicants also assert that the requested relief is appropriate and in the public interest because the relief will promote competitiveness in the variable life insurance market. Various factors have limited the number of insurance companies that offer Variable Contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of name recognition by the public of certain insurers as investment experts to whom the public feels comfortable entrusting their investment dollars. Applicants argue that use of Portfolios as common investment vehicles for Variable Contracts helps to alleviate these concerns because Participating Insurance Companies benefit not only from the investment and administrative expertise of the Trust's investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Making the Portfolios available for mixed and shared funding may encourage more insurance companies to offer Variable Contracts and, accordingly, could result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding also would benefit Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate mutual funds. Furthermore, Applicants assert that the sale of shares of the Trust to Qualified Plans, in addition to Separate Accounts of Participating Insurance Companies, would result in an increased amount of assets available for investment by the Trust. This may benefit Variable Contract owners by promoting economies of scale, by permitting increase safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of the Trust (''Board'') shall consist of persons who are not ''interested persons'' of the Trust as defined by section 2(a)(19) of the 1940 Act and rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any director(s), then the operation of this conditions shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Portfolios for the existence of any material irreconcilable conflict between the interests of the Variable Contract owners of all Separate Accounts investing in any of the Portfolios. A material irreconcilable conflict may arise for a variety of reasons, including: (a) state insurance regulatory authority action; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of a Portfolio are being managed; (e) a difference among voting instructions given by Variable Contract owners; or (f) a decision by a Participating Insurance Company to disregard Variable Contract owners' voting instructions.

3. Participating Insurance Companies and Asset Manager (or any other investment manager of the Trust) and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of any underlying Portfolio of the Trust (''Participants'') will report any potential or existing conflicts, of which they become aware, to the Board. Participants will be obligated to assist the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participant to inform the Board whenever Variable Contract owners' or Plan participants' voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants investing in a Portfolio under their participation agreements, and those participation agreements shall provide that such responsibilities will be carried out with a view only to the interests of the Variable Contract owners or Plan participants.

4. If a majority of the Board, or a majority of the independent trustees of the Board (''Independent Trustees''), determine that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of Independent Trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including; (a) withdrawing the assets allocable to some or all of the Separate Accounts or Plans, as appropriate, from the Portfolios and reinvesting those assets in a different investment medium (including another Applicant, if any) or submitting the question whether such segregation should be implemented to a vote of all affected Variable Contract owners or Plan participants and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, Variable Contract owners, or Plan participants) that votes in favor of such segregation, or offering to the affected Variable Contract owners or Plan participants, as appropriate the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participant's decision to disregard Variable Contract owners' or Plan participants' voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the relevant Portfolio, to withdraw its Separate Account's Investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by the Board that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participants under their participation agreements governing participation in the Portfolios and these responsibilities will be carried out with a view only to the interests of the Variable Contract owners or Plan participants.

For purposes of this condition, a majority of Independent Trustees shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Trust or Asset Manager be required to establish a new funding medium for any Variable Contract or Plan investment. No Participant shall be required by this condition to establish a new funding medium for any Variable Contract or Plan investment if an offer to do so has been declined by a vote of a majority of Variable Contract owners materially

affected by the irreconcilable material conflict.

5. The determination by the Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from Variable Contract owners. Each Participating Insurance Company also will vote share of a Portfolio held in its Separate Accounts for which no timely voting instructions from Variable Contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in a Portfolio calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Portfolio shall be a contractual obligation of all Participating Insurance Companies under their participation agreements.

7. The Trust will notify all Participants that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Trust shall disclose in its Prospectus that: (a) its shares may be offered to insurance company Separate Accounts that fund Variable Contracts of Participating Insurance Companies that may or may not be affiliated with one another, and to Qualified Plans; (b) because of differences of tax treatment or other considerations, the interests of various Variable Contract owners and Qualified Plan participants might at some time be in conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board regarding potential or existing conflicts, and all action of the Board with respect to determining the existence of a conflict, notifying Participants of a conflict, and determining any proposed action adequately remedies a conflict, will be properly recorded in the minutes or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 or Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provided exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Portfolios and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extend such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Trust), and, in particular, the Trust will provide for meetings as required by applicable State law or the Act, including Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in that section) as well as with Section 16(a) and, if and when applicable, Section 16(b). Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

11. The Participants shall, at least annually, submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of the Board shall be a contractual obligation of all Participants under their participation agreements.

12. If a Qualified Plan becomes an owner of ten percent or more of the assets of a Portfolio, such Qualified Plan will execute a fund participation agreement with the Trust on the behalf of such Portfolio. A Qualified Plan shall execute an application containing an acknowledgement of this condition upon such Qualified Plan's initial purchase of the shares of any Portfolio.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–36601; File No. SR–PHLX–95–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Increasing the Maximum Size of Options Orders Eligible for Automatic Execution

December 18, 1995.

On August 21, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the maximum automatic execution (''AUTO-X'') order size eligibility for public customer market and marketable limit orders for all equity and index options from 25 contracts to 50 contracts.

Notice of the proposed rule change was published for comment in the Federal Register on September 26, 1995.[3] No comments were received on the proposal.[4]

Generally, public customer market and marketable limit orders for up to 25 option contracts are eligible for execution through the AUTO-X feature of AUTOM.[5] The PHLX proposes to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36248 (September 19, 1995), 60 FR 49653.

[4] On December 13, 1995, the PHLX submitted a letter indicating that the Exchange's Automated Options Market (''AUTOM'') system and AUTO-X have sufficient capacity to accommodate the proposed rule change. Specifically, the PHLX states that its equity and index option trading floor currently trades approximately 75,000 contracts per day; a small percentage of those orders are filled through AUTO-X. According to the PHLX, AUTOM currently is approximately 30% utilized during peak market activity and can easily support any additional volume associated with the proposal. *See* Letter from William H. Morgan, Vice President, Trading Systems, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Commission, dated December 12, 1995 (''December 12 Letter'').

[5] *See* Securities Exchange Act Release No. 32906 (September 15, 1993), 58 FR 49345 (September 22,

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